

Service Date: September 11, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
Havre Pipeline Company to Decrease)	
Rates and Charges to its Direct Rural)	DOCKET NO. D2002.8.99
Farmstead Customers.)	ORDER NO. 6443

PROCEDURAL ORDER

NOTE: PLEASE READ CAREFULLY. PROVISIONS OF THIS SCHEDULE MAY MODIFY PREVIOUS PSC PROCEDURAL AND SCHEDULING POLICY. THIS IS NOT A PROPOSED ORDER. RECONSIDERATION IS AVAILABLE FOR GOOD CAUSE.

Introduction

1. The Public Service Commission (Commission), itself or through delegation to Commission staff, hereby establishes the procedural schedule to be followed in the above Havre Pipeline Company docket. Any request for reconsideration of this Procedural Schedule must be submitted to the Commission within 10 days of the service date above. A request for reconsideration will be scheduled for the Commission's next available business meeting following the request and the parties will be informed of the action taken. This Procedural Schedule is effective immediately and remains effective unless and until modified by action of the Commission.

Schedule

2. All dates listed in the following schedule are receipt dates (filing and service) unless otherwise specified. Dates prior to the time for intervention as a matter of right are for reference purposes only. Dates and procedures after the date set for hearing are subject to change at the close of hearing. Dates marked "*" are for additional issue procedures if necessary. If an additional issues procedure is determined to be unnecessary, the schedule following the time for identification of additional issues may change. Discovery requests on the utility's application may be submitted at any time up to the discovery date fixed by this schedule. Discovery requests

submitted at least 14 days prior to that date must be answered by the utility at least 4 days prior to that date. All other discovery requests must be answered by the response date fixed by this schedule.

- (a) August 1, 2002: Havre Pipeline filed Request To Decrease Rates.
- (b) August 13, 2002: Commission Granted Request to Decrease Rates.
- (c) August 27, 2002: Commission Rescinded its August 13, 2002 Action and Moved to Grant and so Granted Havre's Request To Decrease Rates on an Interim Basis.
- (d) September 11, 2002: Notice of Application and Intervention Deadline.
- (e) September 23, 2002: Intervention Deadline.
- (f) October 7, 2002: Discovery (includes data requests) to utility on utility's application and prefiled testimony.
- (g) October 21, 2002: Utility's response to discovery on utility's application and prefiled testimony.
- (h) November 4, 2002: Initial prefiled testimony from intervenors.
- (i) November 18, 2002: Discovery on intervenor prefiled testimony.
- (j) December 2, 2002: Intervenor response to written discovery on prefiled testimony.
- (k) December 16, 2002: Utility rebuttal testimony and cross rebuttal from intervenors.
- (l) December 30, 2002: Discovery on rebuttal testimony.
- (m) January 14, 2002: Responses to discovery on rebuttal.
- (n) January 21, 2002: Prehearing Motions.
- (o) January 28, 2002: Prehearing Memorandum filed by all parties. Staff may file a limited prehearing memorandum.
- (p) Hearing date to be scheduled.

3. In addition, satellite hearings and various prehearing conferences may be separately scheduled.

Ex Parte Communications

4. In the case of a contested proceeding, most *ex parte* communications are prohibited. An *ex parte* communication is one between a Commissioner and any person associated with a party in the contested case when the communication involves the contested case or an issue in the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the communication. Commissioner receipt or conveyance of *ex parte* communications is prohibited by law. § 2-4-613 MCA. Party receipt or conveyance of *ex parte* communication is prohibited by law. A few categories of *ex parte* communications pertaining to procedure and scheduling may be allowed by law (e.g., emergency motion for extension of time). Any oral, written electronic, or other form of communication of any kind, between (to or from) a Commissioner and any person associated with any party to a contested case pending before the Commission may be considered *ex parte* communication. Parties and Commissioners must be alert to this possibility in any letters, emails, or personal encounters involving a party and a Commissioner.

PROCEDURE

5. The procedure governing this Docket is set forth in applicable provisions of (a) Title 69, MCA, public utilities; (b) Title 2, Chapter 4, MCA, Montana Administrative Procedures Act (MAPA); (c) ARM Title 38, Chapter 2, procedural rules of the PSC; (d) tariff procedures; and (e) previous Orders of the PSC bearing specifically on the procedure and issues in this docket.

SERVICE AND FILING

6. Copies of all pleadings, motions, discovery requests and responses, prefiled testimony, briefs and other documents shall be filed with the Commission and served on all parties. (Parties includes the Applicant and intervenors. Parties shall file with the Commission an original and ten copies of motions, testimony, briefs and documents directed to the Commission.

Service upon the parties shall be upon each party's attorney of record, if applicable, and such other individuals as may be reasonably designated by the attorney of record.

7. The Commission recommends the following guidelines where data processing and computer equipment are available:

- (a) Data may be provided on 3 1/4" IBM/PC Compatible computer diskettes;
- (b) Spreadsheets should be provided in Microsoft Excel "97" format.
- (c) Text should be provided in Microsoft Word "97" or compatible format.

8. Testimony, exhibits and data requests and responses should be provided both electronically, if feasible, and hard copy. Briefs, motions and any correspondence normally provided to the Service List should be made available electronically on request. Parties to this proceeding should also attempt to provide rate filing mater

INTERVENTION

9. Persons seeking to intervene must file a Petition to Intervene with the Commission. So long as the time set for intervention as a matter of right is met, intervention shall be deemed granted subject to a later ruling on standing (if necessary). In the case of late intervention, the intervenor must: (a) identify the general position that the intervenor will take if the intervention is granted; (b) demonstrate a legal interest directly affected by this docket; (c) demonstrate that the intervention, if granted, will not delay or prejudice the proceeding in this docket; and (d) show good cause why the request for intervention was not timely filed. Late intervention will be effective only upon action of the PSC.

DISCOVERY

10. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as data requests. The Commission urges all parties to conduct discovery primarily through the use of data requests.

11. Data requests must be prepared according to the following guidelines:

- (a) Parties must assign their data requests a request number (e.g., MCC-001).

Request numbers must be consecutive regardless of the party to whom the request is directed

(e.g., the PSC might direct PSC-001 through 008 to the utility, PSC-009 through 016 to an intervenor, and PSC-017 through 019 to the utility).

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Multi-part requests may be used, limited to 5, with each part denoting a lower case letter (a-e). If additional parts are necessary additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500

RE: Purchased Gas Contracts
Witness - Doe, Page JBD-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501

RE: Bypass
Witness - Roe, Page RAR-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

12. The party to whom the discovery requests are directed has five days from receipt to file objections to the request. Notice of the objection shall be served on the Commission and all parties. The Commission may dispose of objections by prompt ruling or may schedule

arguments. Failure to timely object will be deemed acceptance of the request. Parties are encouraged to try to resolve concerns about requests before filing objections.

13. Any requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel, must, within five days after receipt of such response, file before the Commission and parties, the objection or motion and identify the relief requested. The Commission may dispose of such objection by prompt ruling or may schedule argument. The Commission will act to either sustain or overrule the objections. If an objection is sustained, a time period will be set within which a satisfactory response must be made.

14. Submission of written discovery after the period established will be allowed by leave of the Commission only. Requests will not be permitted unless the party making the request shows good cause as to why the request was not submitted within the time period allowed.

15. Unless excused by the Commission, failure by a party to answer data requests or other discovery may result in: (a) refusing to allow the unresponsive party to support or oppose related claims; (b) prohibiting introduction of related matters in evidence; (c) striking pleadings, testimony, or parts thereof; (d) staying further proceedings until the request is satisfied; or (e) dismissing the case, defense, proceeding, or parts thereof.

TESTIMONY AND EVIDENCE

16. The PSC contemplates a complete identification of issues prior to the time of hearing. Introduction of new issues or data in new areas at the time of hearing will be carefully scrutinized and will be subject to disallowance unless reasonably related to issues earlier identified in the application, prefiled testimony, or proceedings.

17. At hearing, prefiled direct, answer, and rebuttal testimony (including on additional issues) will be adopted into the record by motion of the proponent without the need of recitation by the witness. The testimony will be an exhibit and not otherwise entered into the transcript.

18. All proposed exhibits and pre-filed written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter and presiding officer for the preferred manner of identifying exhibits.

19. When cross-examination is based on a document, not previously filed with the Commission, copies of the document must be made available to each commissioner, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the Commission and all parties.

20. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness. Such testimony will be allowed only by leave of the PSC or presiding officer.

21. The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony. Public witnesses may also read written testimony or have it adopted directly into the record.

22. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern.

23. Any party to this proceeding shall have each person who responded to discovery present as a witness at the hearing to introduce the response and available for cross-examination. Parties may waive objections to introduction absent the witness and the right to cross exam. On Commission approval of the waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of parties and upon stipulation approved by the Commission.

PREHEARING MOTION AND CONFERENCES

24. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this docket, shall be raised at the earliest possible time. Pre-hearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the Commission. If oral argument is granted, the party requesting oral argument shall, after scheduling with the PSC, notice the same for hearing before the PSC.

25. The Commission staff may set a Pre-hearing conference to discuss the following: settlement and simplification of issues, possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

26. Nothing in this Order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of Applicant.

PRE-HEARING MEMORANDUM

27. Each party shall submit a pre-hearing memorandum containing a list of all issues, witnesses to testify and exhibits and discovery for introduction at the hearing. Any special needs to accommodate witness sequence or scheduling should be identified in the Pre-hearing Memorandum.

OPEN MEETINGS

28. All PSC meetings regarding this docket are open meetings except as otherwise required or permitted by law. Notification of Commission work sessions concerning this docket will be provided to all persons requesting notification through the Commission's weekly agenda mailing list.

Done and dated this day of September 2002 by delegation to Commission staff.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.